FILED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

2008 SEP 30 P 1:40

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

MINNESOTA LAWYERS MUTUAL INSURANCE COMPANY 333 South Seventh Street, Suite 2200 Minneapolis, Minnesota 55402 Plaintiff, v. ANTONELLI, TERRY, STOUT & KRAUS, LLP 1300 North 17th Street, Suite 1800 Arlington, Virginia 22209 and DONALD E. STOUT, ESQ. 1300 North 17th Street, Suite 1800 Arlington, Virginia 22209 and ADRIENNE ANDROS FERGUSON, individually and on behalf of THE ESTATE OF ANDREW A. ANDROS and EMILY J. ANDROS, individually and on behalf of THE ESTATE OF ANDREW A. ANDROS and JULIA LYNN ANDROS, individually and on behalf of THE ESTATE OF ANDREW A. ANDROS and	)	Case No. 1:08CV1020-LO/TCB

PENELOPE J. ANDROS,)
individually and on behalf of THE ESTATE OF)
ANDREW A. ANDROS)

and)

JOHN S. RICHARDS)

and)

ABBAS YOUSEF)

and)

MIRSUL INVESTMENTS S.A.)

and)

IMPORTECHNO INTERNATIONAL INC.)

Defendants.)

COMPLAINT
(Declaratory Judgment)

Plaintiff Minnesota Lawyers Mutual Insurance Company, by counsel, by and for its cause of action against Defendants Antonelli, Terry, Stout & Kraus, LLP, Donald E. Stout, Esq., Adrienne Andros Ferguson, individually and on behalf of The Estate Of Andrew A. Andros, Emily J. Andros, individually and on behalf of The Estate Of Andrew A. Andros, Julia Lynn Andros, individually and on behalf of The Estate Of Andrew A. Andros, Penelope J. Andros, individually and on behalf of The Estate Of Andrew A. Andros, John S. Richards, Abbas Yousef, Mirsul Investments S.A., and Importechno International Inc., state and allege as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332.

2. Venue is proper pursuant to 28 U.S.C. § 1391.

PARTIES

3. Plaintiff Minnesota Lawyers Mutual Insurance Company ("MLM") is a mutual insurance company organized under the laws of Minnesota with its principal place of business in Minnesota.

4. Defendant Donald E. Stout ("Stout") is a resident of Virginia. At all times relevant hereto, Stout was a principal of Antonelli, Terry, Stout & Kraus, LLP and was an agent and employee of Antonelli, Terry, Stout & Kraus, LLP.

5. Defendant Antonelli, Terry, Stout & Kraus, LLP is a Virginia law firm.

6. Defendant Adrienne Andros Ferguson is a resident of Texas.

7. Defendant Emily J. Andros is a resident of Texas.

8. Defendant Julia Lynn Andros is a resident of Florida.

9. Defendant John S. Richards is a resident of the United Kingdom.

10. Defendant Abbas Yousef is a resident of Abu Dhabi, United Arab Emirates.

11. Defendant Mirsul Investments S.A. is a dissolved Panamanian corporation.

12. Defendant Importechno International Inc. is a dissolved Panamanian corporation.

FACTS COMMON TO ALL COUNTS

13. Pursuant to a Renewal Update Application for Lawyers Professional Liability Insurance executed July 24, 2007 (the "Renewal Application"), MLM issued Lawyers Professional Liability Insurance Claims-Made Policy No. 7405-06 (the "Policy") to Defendant Antonelli, Terry, Stout & Kraus, LLP (the "Law Firm"), for the Policy Period from October 25, 2007 to October 25, 2008, with limits of liability as stated in the Declarations and as modified by the Limits of Liability Endorsement, of $10,000,000 per claim and $10,000,000 aggregate, but with a $5,000,000 per claim limit of liability for any claim made during the policy period arising

out of any act, error or omission which occurred on or before October 25, 2006. All coverage afforded by the Policy is subject to certain endorsements, conditions, definitions, and exclusions. A copy of the Policy, including the Declarations and Application for Coverage, is attached as Exhibit A hereto.

Reporting of CLAIM and MLM's Reservation of Rights

14. By telephone and e mail on August 15, 2008, Scott R. Swirling, the Law Firm's Office Administrator, notified MLM of a claim against the Law Firm and attached to the e mail a Second Amended Complaint filed in Ferguson, et al. v. Stout, et al., Case No. 08-09767CA40, Miami-Dade County, Florida Circuit Court (the "Lawsuit"). A copy of the Second Amended Complaint is attached as Exhibit B hereto.

15. The Second Amended Complaint asserts that certain partners at the Law Firm breached a relationship of trust and confidence with Andrew Andros ("Andros") and with John Richards, Abbas Yousef and certain others (the "Richards Investors"), by putting their own interests, including their investment interests in certain companies, above those of Andros and the Richards Investors. The Second Amended Complaint also alleges that the law firm engaged in a conspiracy with other defendants, including defendant Donald Stout ("Stout") to perpetrate a fraud against Andros and the Richards Investors.

16. In reporting the Second Amended Complaint to MLM on August 15, 2008, Mr. Swirling, on behalf of the Law Firm, sought only coverage and defense of the Law Firm. Stout, a partner of the Law Firm, had been named as a defendant in the original complaint, filed February 22, 2008, and in a first amended complaint filed March 22, 2008. The first amended complaint includes a certificate of service indicating it was transmitted by facsimile to counsel for Stout. At no time prior to August 15, 2008, had the Law Firm or Stout reported the claims

set forth in the original complaint or the first amended complaint to MLM, nor had they forwarded copies of those pleadings to MLM. In addition, at no time has Stout or the Law Firm requested that MLM provide a defense to Stout as to any claims against him in the Lawsuit.

17. On or about August 25, 2008, MLM, by counsel, wrote to the Law Firm and Stout reserving rights as to defense duties and coverage with respect to the claims set forth in the Second Amended Complaint, as well as the right to rescind the policy, for the reasons as set forth therein. MLM also advised the Law Firm and Stout that it would bring a declaratory judgment action with respect to whether MLM had a duty to defend Stout and the Law Firm, and that it would provide a defense to the Complaint subject to the reservation of rights as set forth therein, including the right to withdraw such defense and to recoup from its insureds all amounts paid as indemnity or defense costs under the Policy upon a court's declaration that MLM does not owe a duty to defend.

18. Thereafter, by letter dated September 25, 2008, MLM issued a supplemental reservation of rights as to late notice regarding Stout. Pursuant to Va. Code § 38.2-2226, MLM provided the statutory notice to counsel for plaintiffs in the Lawsuit.

Relevant Policy Provisions

Claims Made Provisions

19. The policy provides, in the CLAIMS-MADE PROVISIONS section, in relevant part, that in order for a claim to be covered,

"The act, error or omission giving rise to the CLAIM must have occurred:

(1) during the POLICY PERIOD, or
(2) prior to the POLICY PERIOD and on or after the PRIOR ACTS RETROACTIVE DATE, if the INSURED had no knowledge of facts which could reasonably support a CLAIM at the effective date of this POLICY.

A CLAIM is deemed made when:

* * *

(3) an act, error or omission by any INSURED occurs which has not resulted in a demand for DAMAGES but which an INSURED knows or reasonably should know, would support such a demand."

Definitions

20. The Policy further provides, at Page 2, in relevant part, that:

"CLAIM(S) means:

* * *

(3) An act, error or omission by any INSURED which has not resulted in a demand for damages but which an INSURED knows or reasonably should know, would support such a demand.

* * *

"DAMAGE(S) means monetary judgments or monetary settlements. DAMAGES does not include any of the following:

* * *

"(2) punitive or exemplary damages assessed against any INSURED, whether or not allowed by statute or common law;

* * *

"(4) the portion of any award, judgment or settlement that does not compensate for loss;"

Exclusions

21. The Policy further provides, at Page 3, in relevant part, that:

"This policy does not afford coverage for the following:

"(1) any CLAIM for DAMAGES arising out of the dishonest, criminal, malicious, or deliberately fraudulent act, error or omission of the INSURED . . .

* * *

(3) any CLAIM arising out of PROFESSIONAL SERVICES rendered by any INSURED in connection with any business enterprise:

(a) owned in whole or in part;
(b) controlled directly or indirectly; or
(c) managed

By any INSURED, and where the claimed DAMAGES resulted from conflicts of interest with the interest of any client or former client or with the interest of any person claiming an interest in the same or related business or enterprise"

22. The Policy includes a "Specific Entity Exclusion Endorsement" that provides:

"Any CLAIM resulting from any act, error or omission arising out of rendering or failing to render PROFESSIONAL SERVICES to or on behalf of the following individual(s), business enterprise(s) or organization(s):

"NTP Incorporated"

Notice of Claims Provisions

23. The Policy further provides, at Page 6, in relevant part, that:

"In the event of a CLAIM, * * * the INSURED must:

(1) give immediate written notice to US;"

* * *

COUNT I
(Declaration Of Rights As To Indemnity And Defense)

24. Plaintiff incorporates the allegations contained in Paragraphs 1-23 of this Complaint as if set forth fully herein.

25. The Second Amended Complaint alleges that professional services were allegedly rendered by Stout in connection with one or more businesses owned in part by Stout and members of the law firm, in which the claimed damages resulted from a conflict of interest between Stout's business interest and the interest of his clients and of persons claiming an interest in a related business enterprise.

26. The Second Amended Complaint alleges that Stout provided legal advice to Andros and the Richards Investors as part of a conspiracy and fraudulent scheme to secure control over the Wireless Email Patents through transfers of the patents to NTP, Inc., a company owned in part by Stout and other attorneys at the Law Firm. The Second Amended Complaint alleges this was all done as part of a scheme to deprive Mr. Andros and the Richards Investors of any benefits from the patents.

27. As such, there is no coverage for any damages under the Second Amended Complaint, and MLM has no duty to defend, pursuant to Exclusion 3 of the Policy, excluding from coverage "any CLAIM arising out of PROFESSIONAL SERVICES rendered by any INSURED in connection with any business enterprise: (a) owned in whole or in part; (b) controlled directly or indirectly; or (c) managed [b]y any INSURED, and where the claimed DAMAGES resulted from conflicts of interest with the interest of any client or former client or with the interest of any person claiming an interest in the same or related business or enterprise".

28. There is also no coverage for any damages under the Second Amended Complaint, and MLM has no duty to defend, pursuant to the Specific Entity Exclusion Endorsement excluding from coverage any claim resulting from any act, error or omission arising out of rendering or failing to render professional services to or on behalf of NTP, Inc., where the company alleged to be owned in part by Stout and other attorneys at the Law Firm and to have received the transferred patents is NTP, Inc. and where the Complaint alleges causes of action based on Stout's actions "[i]n support of NTP's claim of ownership" in requesting that Andy Andros sign an affidavit stating that Telefind had no ownership interest in the Wireless Email Patents.

29. There is also no coverage for any damages under the Second Amended Complaint, and MLM has no duty to defend, because all damages alleged in the Second Amended Complaint fall outside the Policy's coverage provisions in that the Second Amended Complaint fails to allege damages that resulted from the rendering or failure to render professional services. Instead, the Complaint alleges that damages were due to the failure to honor an agreement to share in the proceeds associated with the Wireless Email Patents and the Wireless Email Technology.

30. As to Stout, no coverage or duty to defend exists because Stout failed to give the immediate notice required under the Policy of the original or first amended complaints and the claims therein, but instead provided no notice whatsoever of the claims for at least four months.

COUNT II
(Declaration of Right to Recover Fees And Expenses Incurred In Defense Of The Lawsuit)

31. Plaintiff incorporates the allegations contained in Paragraphs 1-30 of this Complaint as if set forth fully herein.

32. Plaintiff timely reserved its right to recoup from its insureds all amounts paid as indemnity or defense costs under the Policy upon a court's declaration that MLM does not owe a duty to defend.

33. Plaintiff is entitled to recover such fees and expenses upon a declaration that MLM does not owe a duty to defend the Lawsuit.

WHEREFORE, Plaintiff prays this Court order the following relief:

a. Determining and adjudicating the rights and liabilities of the parties under Plaintiff's policy of insurance;

b. Declaring that Plaintiff has no duty to defend or indemnify Defendants Donald E. Stout or Antonelli, Terry, Stout & Kraus, LLP with respect to the Lawsuit;

c. Declaring that Defendant Donald E. Stout breached a contractual precondition to coverage and defense under the Policy, relieving Plaintiff of all liability for indemnity and defense under the Policy;

d. Declaring that Plaintiff is entitled to recover all amounts paid as indemnity or expense costs under the Policy in connection with the Lawsuit; and

e. For such other and further relief as is just and equitable.

Dated: September 30, 2008

Respectfully submitted,

MINNESOTA LAWYERS MUTUAL
INSURANCE COMPANY
By Counsel

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A Professional Corporation

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